IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 640 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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REGAL SCALE INDUSTRIES - Petitioner(s)
Versus
GUJARAT INDUSTRIAL DEVELOPMENTCORPORATION - Respondent(s)

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Appearance :
MR HARIN P RAVAL for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR GIRISH D BHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 22/09/2006

ORAL JUDGMENT

1 Rule. Mr.G.D.Bhatt, learned Advocate appearing on behalf of the respondent waives service. With the consent of the learned Advocates appearing on behalf of the respective parties the matter is taken up for final hearing.

2 This petition under Article 227 of the Constitution challenges order dated 31.12.2005 made by the Court of Addl. District Judge, Rajkot in Civil Misc. Application No. 1230 of 2005 rejecting the application. The petitioner herein, is the original plaintiff while the respondent herein is the original defendant. Hereinafter for the sake of convenience the parties shall be referred to as per their respective description in the suit.

3 It appears that in the suit filed by the plaintiff application Exhibit 5 for interim injunction came to be rejected on 31.08.2005. The plaintiff preferred Review Petition on 20.09.2005. The same was rejected on 26.10.2005. Therefore, a petition came to be moved before this Court being Special Civil Application No.22986 of 2005. During pendency of the said petition an objection was raised on behalf of the defendant that such petition cannot be entertained and remedy, if any, available to the plaintiff would be an Appeal

From Order before the District Court. Thus, the Appeal came to be preferred on 5.12.2005 and the plaintiff also moved an application Exhibit 1 seeking condonation of delay under Section 5 of the Limitation Act.

4 After hearing both the sides and taking into consideration the provisions of Section 5 vis-a-vis Section 14 of the Limitation Act, the lower Court came to the conclusion that the delay could not be condoned for the reasons stated in the impugned order.

5 Mr. Harin Raval, learned Advocate appearing on behalf of the plaintiff has assailed the impugned order on the ground that the lower Court has committed an error in law in rejecting the application for condonation of delay on adoption of hyper technical approach. It was submitted that for the purpose of appreciating whether delay should be condoned or not, the lower Court ought to have taken into consideration the bona fides of the plaintiff in pursuing its remedy by way of review etc. in different forums, and even if such an approach was not found to be correct, once it was found that the plaintiff was pursuing legal remedies the delay ought to have been condoned.

6 Mr.G.D.Bhatt, learned Advocate appearing on behalf of the defendant has supported the impugned order. It was

submitted that the plaintiff cannot adopt a plea that the plaintiff was wrongly advised. That it was the duty of the plaintiff to ascertain the correct legal position and ignorance of law could not be pleaded as an excuse. That the Court should not assist a party who is not vigilant of his rights. He also submitted that delay of each day was required to be explained and the lower Court had rightly come to the conclusion that the plaintiff had failed in explaining the delay.

7 Having heard both the sides it is apparent that the lower Court has adopted an approach based on technicality rather than substantive justice. The facts stated by the plaintiff have not been disputed or doubted by the defendant or even the lower Court. Then, the only question that remains is once a party is found to be bonafide litigating in a wrong Forum should he be penalised for such an act. The position in law is well settled. Though limitation is always a question of fact, once the facts show that a party had not abandoned the cause delay should be condoned by adopting liberal approach, without entering into technicalities, so as to serve the ends of substantial justice.

8 Applying the aforesaid settled position to the facts available on record it is apparent that the plaintiff, may be under wrong advice, preferred Review Application, thereafter moved the High Court and lastly filed the Appeal. Therefore,

the plaintiff cannot be said to have abandoned the cause and the lower Court has committed an error in not condoning the delay in the factual matrix.

9 In the circumstances, for the reasons stated hereinbefore, the petition is allowed. Rule made absolute. Considering the fact that it is at the behest of the petitioner that the defendant has been dragged here it would be in the fitness of things if the plaintiff is directed to pay costs quantified at a sum of Rs.1,000/- to the defendant.

Sd/-
(D.A.Mehta, J.)

m.m.bhatt